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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/071,902

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Christopher B. Hewett

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EXAMINER

BUTLER, MICHAEL E

ART UNIT

PAPER NUMBER

3653

NOTIFICATION DATE

DELIVERY MODE

04/16/2009

ELECTRONIC

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

ADIPFDD@bipc.com

Office Action Summary	Application No. 10/071,902	Applicant(s) HEWETT, CHRISTOPHER B.	
	Examiner MICHAEL E. BUTLER	Art Unit 3653	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 30 January 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 37-42,44,45 and 48 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 37-42,44,45 and 48 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

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DETAILED ACTION

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action, and apply to this and any subsequent Office Actions.

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claim(s) 37-42 and 44-45 and 48-52 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Schwimmer et al. '275 (2841275) in view of Smith et al. 6364156 wherein Schwimmer et al. '276 discloses:

c) expanding the tissue disposal section internal volume and the tissue dispensing orifice and tissue dispensing orifice are moved away from one another (in compact configuration of fig 4, expanding receptacle moves aperture 64/66/68 or 18a away from dispensing aperture 32)

d) removing tissues in the direction of the expansion (c2 L40-42)

(e) inserting used tissues in the disposing orifice at an upper body portion in a direction opposite the tissue dispensing orifice (c3 L34-37)

(Re: cl 38) expanding a pleats around the body periphery that expands as a function of moving the divider (28)

(Re: cl 39) expanding a plurality of pleats around the periphery of the body as the tissue disposal section becomes full of used tissues (c2 L 64-70)

(Re: cl 40) expanding the disposal section in the vertical direction (c3 L 40-51)\

expanding the disposal section at least double the original volume (as the original disposal section is originally collapsed to a minimal volume necessary to hold the soiled tissues, the low near zero original divisor results in a more than doubled volume calculation as several tissues are added)

(Re: cl 44) providing a body defining the wall of the dispenser (26; c 2 L 45-52,)

(Re: cl 45) expanding tissue disposal section to at least double an original volume (collapsed disposal is expanded from an essentially zero volume to a volume sufficient to hold several tissues)

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(Re: cl 48) pulling off a lid portion to expose the interior of the disposal section (22 over 38)

(Re: cl 49) pulling off another portion of the body to expose the interior portion of the dispensing section and inserting fresh tissue therein (25 being removed in fig 4; c3 L 14-16)

(Re: cl 50) pulling a portion of the body to expose the interior of the tissue dispenser section and inserting fresh tissue therein (25 being removed in fig 4)

(Re: cl 51) pulling off the bottom portion of the body (breaking c3 L1-2, dotted lines representing flaps)

(Re: cl 52) pulling of a top portion of the body to expose the interior of the disposal section and emptying the contents and pulling off a bottom portion of the body Plurality of pleats (breaking c3 L1-2, dotted lines representing flaps)

Smith et al. discloses:

b) mounting the body above the floor level such that the tissue disposing orifice is accessible for insertion of used tissues (c2 L 16-26; c1 L 30-39)

(Re: cl 41,42) suspending an upper portion of the body (32/26/27 fig 3, dispenser is an upper portion).

It would have been obvious at the time of the invention for Schwimmer et al. '275 mount the dispenser above floor level to provide one hand operation of the dispenser and disposal and minimize floor and counter space usage as taught by Smith et al..

It would have been obvious at the time of the invention for Schwimmer et al. '275 to suspend the an upper portion of the body to suspend the dispenser in a gravitmetrically stable orientation as taught by Smith et al..

3. Claim(s) 37-42 and 44-45 and 48 and 52 is/are rejected under 35 U.S.C. 103(a) as being unpatentable over Rinegold 3270938 in view of Smith et al. 6364156 wherein Rinegold discloses:

c) expanding the tissue disposal section internal volume (C2 L 71-3 L16) and the tissue dispensing orifice and tissue dispensing orifice are moved away from one another (24 moved away from 36 as disposal receptacle expanded)

(e) inserting used tissues in the disposing orifice at an upper body portion in a direction opposite the tissue dispensing orifice (c2 L 50-51)

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(Re: cl 38) expanding pleats around the body periphery that expands as a function of moving the divider (28 ; c3 L 6-16)

(Re: cl 39) expanding a plurality of pleats around the periphery of the body as the tissue disposal section becomes full of used tissues (28 ; c3 L 6-16,)

(Re: cl 40) expanding the disposal section in the vertical direction

expanding the disposal section at least double the original volume (as the original disposal section is originally collapsed, the low near zero original divisor results in a doubled volume calculation)

(Re: cl 44) providing a body defining the wall of the dispenser (c2 L 17-19)

(Re: cl 45) expanding the disposal section at least double the original volume (the waste receptacle both telescopes in to minimize receptical volume to the minimal surface top necessary and then expands out (c2 L 71-3 L5) as the original disposal section is originally collapsed to minimize counter surface space used when empty or near empty, the low near zero original divisor results in a doubled volume calculation upon expansion of several used tissues)

(Re: cl 48) pulling off a lid portion to expose the interior of the disposal section (pulling off disposal cover 34 to open disposal section inherent in disposal operation)

(Re: cl 52) pulling of a top portion of the body to expose the interior of the disposal section and emptying the contents and pulling off a bottom portion of the body (pulling off disposal cover 34 to open disposal section inherent in disposal operation)

(Re: cl 39) expanding a plurality of pleats around the periphery of the body as the tissue disposal section becomes full of used tissues

Smith et al. discloses:

b) mounting the body above the floor level such that the tissue disposing orifice is accessible for insertion of used tissues (c2 L 16-26; c1 L 30-39)

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d) removing tissues in the direction of the expansion (downward facing dispensing aperture 23 with an upper body mounting as in Smith et al. results in expansion in the same direction as dispensing)

(Re: cl 41,42) suspending an upper portion of the body (32/26/27 fig 3, dispenser is an upper portion)

It would have been obvious at the time of the invention for Rinegold to mount the dispenser above floor level to provide one hand operation of the dispenser and disposal and minimize floor and counter space usage as taught by Smith et al.. It would have been obvious at the time of the invention for Rinegold to mount the dispenser above floor level to provide one hand operation of the dispenser and disposal and minimize floor and counter space usage as taught by Smith et al..

It would have been obvious at the time of the invention for Rinegold to suspend the an upper portion of the body to suspend the dispenser in a gravitmetrically stable orientation as taught by Smith et al..

. Response to Amendments/Arguments

4. Applicant's amendment was effective in overcoming the previous rejections.

Applicant's further arguments are deemed moot in view of the new grounds for rejection.

Conclusion

5. Applicant's amendment necessitated the new grounds for rejection. Accordingly, **THIS ACTION IS MADE FINAL**. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

6. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Exmr. Michael E. Butler whose telephone number is (571) 272-6937.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Patrick Mackey, can be reached on (571) 272-6916. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications

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may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/M. E. B./

Examiner, Art Unit 3653

/Patrick H. Mackey/

Supervisory Patent Examiner, Art Unit 3653